

FILED
08 JUL 11 PM 4:33
ORIG

FLORENCIO PALOMINO VALLEJO
CORCORAN STATE PRISON
PRISONER CDC# 71999 A-3-173 L
P.O. BOX 5242
CORCORAN, CA 93212
PRO PER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FLORENCIO PALOMINO VALLEJO
PETITIONER/APPELLANT
VS.
KEN CLARK (WARDEN)

No. C 07-4536 JSW (PR)

PETITIONER FLORENCIO PALOMINO VALLEJO, WOULD
LIKE TO GIVE A THANK-YOU TO THE UNITED STATES
DISTRICT JUDGE JEFFREY S. WHITE FOR HIS GRACE
UPON ME.

UPON RECEIVING YOUR LETTER OF GRANTING
EXTENSION OF TIME IN WHICH WAS JUNE 27, 2008.
I MOVE TO EXPLAIN MY CASE FOR FOR MA-PAUPERIS

Court Paper

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1 MY DISORDER: AN ABNORMAL PHYSICAL CONDITION
2 OF BEING IN A WHEELCHAIR AND DEPENDENT
3 ON A CAREGIVER; AS WHEELS CONTINUE TO GO
4 FORWARD MY ENGLISH CONDITIONS ARE VERY
5 DIFFICULT FOR ME TO ARRANGE TIME IN THE LAW-
6 LIBRARY TOGETHER WITH A TRANSLATOR.

7
8 NEVERTHELESS, I AM RESPONDING TO THE
9 MOTION, HABEAS CORPUS PETITION.

10
11 THE PETITION FOR HABEAS CORPUS WAS FILED, FIRST
12 IN 2000 AND IT HAS BEEN DENIED UP TO 2008
13 BECAUSE THE STATUTE OF LIMITATIONS OF
14 TOLLING IS TAKEN INTO ACCOUNT.

15
16 I BELIEVE THAT I AM ENTITLED TO EQUITABLE
17 TOLLING. LABORIOUS EFFORT HAS BEEN DONE TO PROVE
18 FOR JUSTICE TO BE CIVILIZED.

19
20 'WHALEM/HUNT V. EARLY (9th CIR. 2000) 204 F.3d
21 907, WHICH WAS CITED IN THE CSPH, THIRD. ED.,
22 FOOTNOTE 196 AS AN EXAMPLE, A CASE WHERE
23 EQUITABLE TOLLING WAS NOT ALLOWED, WAS
24 REHEARD AND REVERSED. ON REHEARING ~~THE~~
25 9th CIRCUIT FOUND THAT LACK OF ACCESS TO
26 ADEQUATE LEGAL MATERIALS COULD BE
27 GROUNDS FOR EQUITABLE TOLLING.⁵⁰⁶



EQUITABLE TOLLING

THE DOCTRINE OF EQUITABLE TOLLING MAY BE AVAILABLE IN EXTRAORDINARY CIRCUMSTANCES. IN HERBST V. COOK (9TH CIR. 2001) 260 F3D 1039, 1043, NINTH CIRCUIT RULED THAT THE DISTRICT ERRED IN DISMISSING A HABEAS CORPUS PETITION AS UNTIMELY WITHOUT GIVING THE PETITIONER AN ADEQUATE OPPERTUNITY TO DEVELOPE THE FACTS UNDERLYING HIS CLAIMS OF EQUITABLE TOLLING AND STATED CREATED IMPEDIMENT TO FILING. SEE ALSO ROY V. LAMPERT (9TH CIR. 2006) 465 F3D, 964, 969 (PRO SE PETITIONERS ENTITLED TO EVIDENTIARY HEARING ON EQUITABLE TOLLING WHEN THEY ALLEGED PRISON HAD "WOEFULLY DEFICIENT LAW LIBRARY").

MENDOZA V. CAREY (9TH CIR. 2006) 449 F3D 1065, 1069 (PETITIONER, A SPANISH-SPEAKER, ENTITLED TO EVIDENTIARY HEARING ON EQUITABLE TOLLING WHEN HE ALLEGED THAT PRISON LAW LIBRARY FAILED TO PROVIDE SPANISH-LANGUAGE BOOKS OR SPANISH-SPEAKING CLERKS OR LIBRARIANS TO ASSIST SPANISH-SPEAKING INMATES);

ESPINOZA-MATTHEWS V. CALIFORNIA (9TH CIR 2005) 432 F3D 1021 (PRISON'S REFUSAL TO ALLOW PETITIONER ACCESS TO HIS LEGAL PAPERS



1 FOR 11 MONTH DESPITE HIS DILIGENT ATTEMPTS
2 TO OBTAIN THEM WAS EXTRAORDINARY CIR-
3 CUMSTANCES THAT ENTITLED HIM TO EQUITABLE
4 TOLLING); LAWS V. LAMARQUE (9th CIR 2003)
5 351 F3d 919, 913, (DISTRICT COURT ABUSED
6 DISCRETION BY DENYING PETITION WITHOUT
7 ORDERING DEVELOPMENT OF RECORD ON PETITIONER'S
8 ELIGIBILITY FOR EQUITABLE TOLLING OWING TO
9 HIS MENTAL INCOMPETENCE DURING LIMITATIONS
10 PERIOD);

11
12 IN FAIL V. HUBBARD (9th CIR. 2002) 315 F3d 1059,
13 THE 9th CIR. HELD THAT NEITHER STATUTORY NOR
14 EQUITABLE TOLLING WAS AVAILABLE TO A
15 PETITIONER WHOSE TOTALLY UNEXHAUSTED
16 FEDERAL HABEAS PETITION WAS DISMISSED
17 AFTER AEDPA DEADLINE HAD PASSED. NOTE,
18 HOWEVER, THAT IF AT LEAST ONE CLAIM IS EXHAUSTED,
19 IT MAY BE POSSIBLE TO PRESERVE THE UNEXHAUSTED
20 CLAIMS. SEE JEFFERSON V. BUDGE (9th CIR 2005)
21 419 F3d 1013. (WHEN TRIAL COURT
22 ERRONEOUSLY DISMISSED MIXED PETITION
23 WITHOUT OFFERING PETITIONER OPPOR-
24 TUNITY TO AMEND PETITION TO OMIT
25 UNEXHAUSTED CLAIMS, PETITIONER WAS
26 ENTITLED TO EQUITABLE TOLLING WHILE
27 STATE EXHAUSTED PROCEEDING PENDING
28 FOR DISCUSSION.



1 MENDOZA V. CAREY (9TH CIR. 2006) 449 F3d 1065, 1069.

2 PETITIONER, WHO PLEADED NO CONTEST TO ASSAULT WITH
3 A FIREARM, SOUGHT FEDERAL HABEAS CORPUS RELIEF.

4 THE UNITED STATES DISTRICT COURT FOR THE CENTRAL
5 DISTRICT OF CALIFORNIA, CARMAC J. CARNEY, J.; DIS-
6 MISSED PETITION AS UNTIMELY PETITIONER APPEALED.

7
8 THE COURT OF APPEALS, TASHIMA, CIRCUIT JUDGE,
9 HELD THAT, AS A MATTER OF FIRST IMPRESSION,
10 PETITIONER'S ALLEGED LACK OF ACCESS TO SPANISH-
11 LANGUAGE LEGAL MATERIALS OR ASSISTANCE OF
12 TRANSLATOR DURING LIMITATIONS PERIODS COULD
13 COULD ENTITLE HIM TO EQUITABLE TOLLING.

14 REVERED AND REMANDED

15 KLEINFELD, CIRCUIT JUDGE, DISSENTED AND FILED
16 A SEPARATE OPINION

17 WEST HEADNOTES

18 (1) HABEAS CORPUS ► K 842. 197__ 197 III JURISDICTION,
19 PROCEEDINGS, AND RELIEF. 197 III (D) 2 SCOPE AND
20 STANDERS OF REVIEW. 197 III (D) REVIEW. ► 197 K 842
21 REVIEW DE NOVO.

22
23 [SEE HAND NOTE TEXT BELOW]

24 ► HABEAS CORPUS ► K 843. 197__ 197 III JURISDICTION,
25 PROCEEDING, AND RELIEF. 197 III (D) REVIEW. 197 III (D) 2
26 SCOPE AND STANDARDS OF REVIEW. ► 197 K 843
27 DISCRETION OF LOW COURTS.

28 DISTRICT COURT'S DENIAL OF A PETITION FOR WRIT



1 OF HABEAS CORPUS IS REVIEW DE NOVO, AND DENIAL
2 OF AN EVIDENTIARY HEARING IS REVIEWED FOR ABUSE
3 OF DISCRETION.

4 ► HABEAS CORPUS ► K 846

5 197___ 197 III JURISDICTION, PROCEEDINGS, AND RELIEF.
6 197 III (D) REVIEW. 197 III (D) 2 SCOPE STANDARDS OF
7 REVIEW. ► 197 K 846 CLEAR ERROR.

8
9 FINDINGS OF FACT MADE BY THE DISTRICT IN HABEAS
10 CORPUS PROCEEDINGS ARE REVIEWED FOR CLEAR ERROR.

11 ► HABEAS CORPUS K 603

12 197___ 197 III JURISDICTION, PROCEEDINGS, AND
13 RELIEF. 197 III (A) IN GENERAL. 197 K 603 LACHES OR
14 DELAY.

15 LITIGANT SEEKING EQUITABLE TOLLING OF ONE-YEAR
16 LIMITATIONS PERIOD FOR FILING FEDERAL HABEAS CORPUS
17 PETITION BEARS BURDEN OF ESTABLISHING TWO ELEMENTS
18 (1) THAT HE HAS BEEN PURSUING HIS RIGHTS DILIGENTLY,
19 AND (2) THAT SOME EXTRAORDINARY CIRCUMSTANCES
20 STOOD HIS WAY OR IN HIS WAY 28 U.S.C.A. # 2244 (D).

21
22 BECAUSE MENDOZA ALLEGED THAT HE LACKS ENGLISH
23 LANGUAGE ABILITY, HE WAS DENIED ACCESS TO SPANISH-
24 LANGUAGE LEGAL MATERIALS, AND COULD NOT PROCURE
25 THE ASSISTANCE OF A TRANSLATOR DURING THE RUNNING
26 OF THE AEDPA LIMITATIONS PERIOD, HE HAS ALLEGED
27 FACTS THAT, IF TRUE, MAY ENTITLE HIM TO EQUITABLE
28 TOLLING ► (FNLG) (CURIAM) ACCORD. 449 F.3d 1069.



1 THEREFORE, THERE ARE "CIRCUMSTANCES CONSISTENT
 2 WITH PETITIONER'S PETITION AND DECLARATION
 3 UNDER WHICH HE WOULD BE ENTITLED TO
 4 EQUITABLE TOLLING," ► WHALEM/HUNT, 233 F.3d
 5 AT 1148, AND REMAND FOR FACTUAL DEVELOPMENT
 6 OF RECORD IS THE APPROPRIATE COURSE OF ACTION.
 7 MENDOZA HAS NOT YET BEEN GRANTED AN
 8 EVIDENTIARY HEARING IN WHICH HIS FACTUAL
 9 ALLEGATION COULD BE ESTABLISHED; NOR HAS
 10 THE STATE BEEN PROVIDED WITH AN OPPORTUNITY
 11 TO REBUT MENDOZA'S ALLEGATIONS. WE THERE-
 12 FORE REVERSE AND REMAND TO THE DISTRICT COURT
 13 FOR APPROPRIATE DEVELOPMENT OF THE RECORD.

14 REVERSED AND REMANDED

15 KLEINFELD, CIRCUIT JUDGE, DISSENTING

16 I RESPECTFULLY DISSENT.

17
 18 ► LOTT V. MUELLER, 304 F.3d 918, 923 (9th CIR. 2002)

19 OBSERVING THAT EQUITABLE TOLLING DETERMINATIONS
 20 "TURN [] ON EXAMINATION OF DETAILED FACTS."

21
 22 ► [4] [5] WHETHER A HABEAS PETITIONER'S IN-
 23 ABILITY TO OBTAIN SPANISH-LANGUAGE
 24 MATERIALS OR PROCURE TRANSLATION ASSISTANCE
 25 CON BE GROUNDS FOR EQUITABLE TOLLING OF AEDPA'S
 26 OF YEAR LIMITATIONS PERIOD IS A QUESTION OF
 27 FIRST IMPRESSION IN THIS CIRCUIT. IN ► WHALEM/
 28 HUNT 233 F.3d AT 1148, WE HELD THAT THE



UNAVAILABILITY OF COPY OF AEDPA IN PRISON LAW LIBRARY COULD, BUT DID NOT NECESSARILY, CONSTITUTE GROUNDS FOR EQUITABLE TOLLING (FN3). WE REMANDED THE CASE TO THE DISTRICT COURT FOR APPROPRIATE DEVELOPMENT OF THE RECORD ID. SO LONG AS THERE ARE SOME "CIRCUMSTANCES CONSISTANCE WITH PETITIONER'S PETITION AND DECLARATION" THAT WOULD ENTITLE THE PETITIONER TO EQUITABLE TOLLING (A) "LITIGANT" (DISCUSSION) (A) LITIGANT SEEKING EQUITABLE TOLLING [OF THE ONE YEAR LIMITATIONS PERIOD] BEARS THE BURDEN OF ESTABLISHING TWO ELEMENTS (1) THAT HE HAS BEEN PURSUING HIS RIGHTS DILIGENTLY, AND (2) THAT SOME EXTRAORDINARY CIRCUMSTANCES STOOD IN HIS WAY."

► PAGE V. DIGUGLIELMO, 544 U.S. 408, 125 S. CT 1807, 1814, 161 L. ED. 2D 669 (2005). [T] HE THRESHOLD NECESSARY TO TRIGGER EQUITABLE TOLLING UNDER [THE] AEDPA IS VERY HIGH, LEST THE EXCEPTIONS SWALLOW THE RULE." MIRANDA V. CASTRO, 292 F.3D 1063, 1066 (9th CIR. 2002). (INTERNAL QUOTATION MARKS AND CITATION OMITTED). THIS HIGH BAR IS NECESSARY TO EFFECTUATE THE AEDPA'S STATUTORY PURPOSE OF ENCOURAGING PROMPT FILINGS IN THE FEDERAL SYSTEM FROM CLAIMS."

► GUILLORY V. ROE, 329 F.3d 1015, 1018



1 9th CIR (2003) (INTERNAL QUOTATION MARKS
2 AND CITATIONS OMITTED). EQUITABLE TOLLING
3 DETERMINATIONS ARE "HIGHLY FACT-DEPENDENT."
4 WHALEM/HUNT V. EARLY, 233 F.3d 1146, 1148
5 (9th CIR. 2000) (EN BANC) (PER-PAGE(2))



CONCLUSION

1
2 ACCORDING TO ALL MY APPEALS, STARTING IN TWO
3 THOUSAND (2000) THROUGH (2005) IN THE
4 UNITED STATES SUPREME COURTS AND THE
5 LOWER COURT AS WELL HAVE DENIED MY
6 APPEAL AS UNTIMELY.

7
8 THEN I WAS ADVISED TO APPEAL IN THE FEDERAL
9 COURT NORTHERN DISTRICT OF CALIFORNIA.
10 WITH THE INTENT OF A GRACEFUL DOCUMENT
11 THAT WAS FILED IN 2006, (HABEAS CORPUS) IT
12 WAS ALSO DENIED AS UNTIMELY. IN (2007)
13 ANOTHER HABEAS CORPUS WAS FILED AS
14 UNTIMELY.

15
16 AS A MATTER OF BELIEVE I HAVE FILED A
17 COMPLAINT AGAINST THE ATTORNEY'S THAT
18 REPRESENTED ME IN THE LOWER COURTS. THE
19 COMPLAINT WENT TO "THE" STATE BAR OF
20 CALIFORNIA 1149 SOUTH HILL STREET
21 LOS ANGELES, CALIFORNIA 90015-2299"

22 BECAUSE OF MY ATTORNEYS UNAUTHORITATIVE
23 STATEMENTS OF OBSERVATION FOR SELF GAIN. THEY
24 ADVISE ME WITH NOTHING BUT FALSE INFORM-
25 ATION. IN WHICH THE ATTORNEYS NEVER
26 FILED ANY APPEALS ON MY BEHALF. AS THEY
27 STATED THEY WOULD. THAT HAS BEEN ALMOST
28 TEN YEAR HERE IN THIS REFORMATORY.



1 MY CLAIM IS THAT BECAUSE OF MY DISABILITY,
2 NOTKNOWING ENGLISH OR EVEN KNOWING NOT-
3 THING OF THE LEGAL LAW THAT CAN HELP
4 ME WITH THIS MATTER, I HAVE BEEN DENIED
5 YEAR UPON, TO THIS VERY DATE OF 2008.

6
7 IN MENDOZA V. CAREY THERE ARE SIMILARITIES
8 AS MINE. AS I THROW MYSELF UPON THE MERCY
9 OF THIS COURT. I FILE THIS HABEAS CORPUS AS
10 FOLLOWS (1) MY ENGLISH IS A HELPLESS MATTER
11 SITUATION. (2) THERE HAS NOT BEEN ANY LEGAL
12 MATERIAL IN SPANISH, TO HELP ME FILE ANY
13 LEGAL FORMS. (3) IN THE LAW LIBRARY THERE
14 WAS NO SPANISH-SPEAKING LIBRARIAN THAT COULD
15 HELP.

16 THERE HAS NOT BEEN GIVEN TO ME THE OPPORTUNITY
17 TO MAKE KNOWN OPENLY MY INNOCENTS.

18
19 THANT-YOU FOR YOUR TIME

20
21 SINCERELY,

22
23 FLORENCIO PALOMINO VALLEJO
24
25
26
27
28




1 AS PETITIONER/APPELLANTE DOES NOT HAVE THE NECESSARY
2 KNOWLEDGE OR UNDERSTANDING OF THE LEGAL SYSTEM THAT
3 WOULD AFFORD HIM THE ABILITY TO COMPLY WITH THE TECHNICAL
4 REQUIREMENTS OF THE FEDERAL COURT SYSTEM.

5
6 PETITIONER/APPELLANT DOES NOT WRITE, READ, OR
7 SPEAK ENGLISH, AND HE IS JUST BARELY LEARNING HOW
8 TO READ HIS NATIVE TONGUE OF SPANISH, AND WRITE. THEREFORE,
9 HE IS NOT AN ATTORNEY, AND DOES NOT HAVE THE REQUISITE
10 LEGAL KNOWLEDGE AND EXPERTISE TO ENSURE THAT ENDS
11 OF JUSTICE AND THE CONSTITUTIONAL GUARANTEES OF FAIRNESS
12 WILL APPROPRIATELY BE MET. THESE ISSUES ARE COMPLEX
13 AND SENSITIVE.

14
15 I DECLARE THAT THE FOREGOING IS TRUE AND CORRECT.
16 THIS DOCUMENT WAS PREPARED BY INMATE ALFREDO RAMIREZ
17 #CDC F-05745

18
19 DATED: JULY 3, 2008

20
21 RESPECTFULLY SUBMITTED,

22
23 
24 FLORENCIO PALOMINO VALLEJO
25 IN PROPRIA PERSONA
26 IN FORMA PAUPERIS

27
28 Alfredo Ramirez
29 ALFREDO RAMIREZ F-05745
30 FRIED OF PETITIONER



PROOF OF SERVICE BY MAIL**BY PERSON IN STATE CUSTODY**

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, FIDRENCIO PALOMINO VALLEJO, declare:I am over 18 years of age and a party to this action. I am a resident of THE CORCORAN
STATE PRISON II Prison,in the county of KINGS COUNTY,State of California. My prison address is: P.O. Box 5248
CORCORAN, CA, 93212On JULY 5, 2008
(DATE)I served the attached: HABEAS CORPUS FORM
IN THE UNITED STATE FEDERAL COURT
(DESCRIBE DOCUMENT)

on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional institution in which I am presently confined. The envelope was addressed as follows:

NORTHERN DISTRICT APPEALS COURT	OFFICE OF THE ATTORNEY GENERAL
235 PINE ST.	435 GOLDEN GATE 11000
SAN FRANCISCO, CA 94104	SAN FRANCISCO, CA 94102

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 7.6.008
(DATE)

(DECLARANT'S SIGNATURE)



1 Dear Clerk

2
3 Indigent inmates at Corcoran, S.A.T.F/SP are limited
4 to one (1) copy to the court and one (1) copy to the Attorney
5 General of any legal materials being filed with the courts.
6

7 Enclosed you will find only one (1) copy because of my indigent
8 status and the above policy.
9

10 DATED:

11 7.6.008

Respectfully submitted

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27
28

FLORENCIO PALOMINO VALLEJO
C.D.C. P-71999 A-3-C-173 L
CSATF--SP
P.O. BOX 5248
CORCORAN, CA 93212

RECEIVED
JUL 10 2008
UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

NORTHERN DISTRICT OF CALIFOR
APPEALS COURT DIVISION
235 PINE ST.
SAN FRANCISCO, CA 94104-270

Legal Materials

P. D. G. 7/11/08